therefore the book value of the machinery in the 1958 balance sheet should be disregarded and a reduced value should be fixed thereon. The introduction of this evidence was objected to on the ground that that issue is pending before another court and as far as the present case was concerned the balance sheet made no mention of the machinery being charged or sold to any creditor. I hold, therefore, that the petitioners are estopped from denying that the machinery was unencumbered when the balance sheet for 1958, upon which the petitioners are relying for support in their appeal, shows that the machinery was unencumbered. Secondly: that the company was insolvent at the time of the death of the deceased. The company has no assets but has liabilities amounting to over $200,000. In that event, therefore, it was urged that no value should be given to this credit balance or in account thereof. It is true, looking at the balance sheet of the company as at 30th June 1958, that the liabilities of the company far exceeded the assets of the company. But that ground alone, to my mind, is insufficient. A credit balance in another company is still an asset of the deceased until it is proved to be irrecoverable. It has been suggested that the collector should estimate the value of the credit balance upon supposed liquidation of the company. I think this is a wrong principle to apply. There is no evidence that the company is going to be liquidated or that the debt is irrecoverable. No attempt has, in fact, been made to recover the debt. It is stated in *Woolley's* on Death Duties (7th edition) in reference to debts or credit balance of the deceased —

"Debts must be brought in even thought they are likely to be bad, and if they afterwards prove to be irrecoverable a claim may be made for repayment of duty."

This is a sound principle which I would adopt and for which I can find support, firstly in the definition of "property" in the Estate Duty Enactment 1941 which states that:—

"property includes.....

(a) any debt of any kind due to the deceased person at the date of his death.....or if such debt is unsecured (as in this case) but has been recovered or is recoverable in any court within the Malay States."

and secondly, under section 41 of the Enactment, if a debt proves totally irrecoverable or if only a part of it could be recovered, then the petitioner could make out a case for a refund under that section. I hold, therefore, that the collector was correct in taking the book value of credit balance as the proper value of the assets of the deceased in that company.

In the circumstances the appeal is dismissed and the petitioners shall pay the costs of the respondent as taxed by a proper officer of the court.

Appeal dismissed.

Solicitors: *Shook Lin & Bok.*

GNANASUNDRAM v. PUBLIC SERVICES COMMISSION

[O.C.J. (Raja Azlan Shah J.) November 8, 1965]

[K.L. — Originating Motion No. 13 of 1965]

Administrative Law — Public services — Temporary employment — Termination of employment-contract — Whether necessary to afford a hearing — Certiorari — Application to enlarge time for making application — English R.S.C. O. 59 rr. 3 & 4 — R.S.C. 1957, O. 1 & 2, O. 64 r. 7 — Constitution of Malaysia, arts. 132(2A) and 135.

The applicant applied for an order of *certiorari* to quash the decision of the Public Services Commission terminating the appointment of the applicant as a temporary officer. The application was made more than six months after the decision of the Public Services Commission and the applicant applied for enlargement of time to make the application.

Held: (1) the court will only extend the time where a strong case for it is shown and the only delay that the court will excuse is the delay involved in the pursuit of a legal remedy open to the applicant;

(2) in this case the relationship between the Government and the applicant was one of contract and the Government was therefore entitled to terminate the employment of the applicant by payment of a month's salary in lieu of notice, as provided in the contract;

(3) the applicant in this case was not dismissed from the service and therefore the provisions of article 135(2) of the Constitution did not apply so as to give him an opportunity to be heard;

(4) in the circumstances no strong case had been established to warrant the court in enlarging the time in respect of the application and therefore the application must be dismissed.

Cases referred to:—

(1) *Gandhinagar Motor Transport Society* v. *Bombay State* A.I.R. 1954 Bom. 202.

(2) *Satish Chandra Anand* v. *The Union of India* A.I.R. 1953 S.C. 250 at p. 252.

ORIGINATING MOTION.

A. Mahendra for the applicant.

Au Ah Wah (Senior Federal Counsel) for the respondent.

Cur. Adv. Vult.

Raja Azlan Shah J.: This is an application for leave to apply for an order of *certiorari* to quash the decision of the Public Services Commission terminating the appointment of the applicant as a temporary enforcement officer in the road transport department. In the alternative, to ask for leave for enlargement of time to make the application.

The procedure in applying for an order of *certiorari* is well settled in the United Kingdom. Unfortunately, no provisions exist in our Rules of the Supreme Court to entertain such an appli-tion. However, Order 1 rule 2 of the Rules of

the Supreme Court permits us to resort to the procedure adopted in the High Court of Justice in England. Order 59 rule 3 of the English Rules of the Supreme Court, 1883, provides:—

"(1) No application for an order of mandamus, prohibition or *certiorari* shall be made unless leave therefor has been granted in accordance with this rule".

Order 59 rule 4 provides:—

"(2) Leave shall not be granted to apply for an order of *certiorari* to remove any judgment, order, conviction or other proceeding for the purpose of its being quashed, unless the application for leave is made not later than six months after the date of the proceeding or such shorter period as may be prescribed by any enactment; and where the proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the court or judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired".

It is necessary to go briefly into the facts of this case in order to consider the application. Pursuant to an offer of appointment by the Public Services Commission, the applicant was appointed as a temporary enforcement officer in the road transport department on 4th December, 1961. The offer of appointment, among other things, states:—

"I am directed to inform you that on behalf of the Government of the Federation of Malaya, the Public Services Commission is pleased to offer you appointment as

Temporary Enforcement Officer, Road Transport Department, Federation of Malaya,

on a salary of $605 per mensem on the scale $605 x 23 — 835 with effect from the date of assumption of duty following the acceptance of this offer.

2. This is offer is subject to the following conditions:

(d) That during the first year of the period of your appointment, your services would be terminable at any time with one month's notice or one month's salary plus cost of living allowance in lieu, and without any reason being given. You would also be free to relinquish your appointment by giving one month's notice or one month's salary in lieu plus cost of living allowance. During the rest of your period of appointment, the appropriate notice required for both parties would be three months or one month's salary in lieu plus cost of living allowance.

3. The appointment offered is temporary".

On 10th August, 1964, the Acting Registrar and Inspector of Motor Vehicles, Pahang, Raub, handed to the applicant, who I shall presume to be stationed at Raub at that time, a letter dated 4th August, 1964, from the Public Services Commission, which reads as follows:—

"I am directed to inform you that in accordance with paragraph 2(d) of the offer of appointment as temporary enforcement officer in the road transport department made vide PSC. R/34/15 dated 21hb. November, 1961, and which you have accepted the Commission has decided to terminate your services by payment of one month's salary and Cola. in lieu of notice".

The applicant appealed to the Public Services Commission to let him know the reasons why his service was terminated without notice. There was an exchange of letters between the applicant and the Public Services Commission, and on 9th August, 1965, the present application was made.

It is admitted by counsel for the applicant that the course of action arose on 10th August, 1964, and consequently his application which was dated 9th August, 1965 is caught within the ambit of Order 59 rule 3, that is to say his application was out of time. He now seeks the court's indulgence to extend the time for leave to apply for an order of *certiorari*. He cited a passage at page 1370 of the *Annual Practice*, 1960, which reads:—

"The court may extend the time under Order 64 rule 7, but will only do so where a strong case for it is shown".

Order 64 rule 7 is substantially the same as our Order 64 rule 7.

Without going into the merits of the case, counsel contended that the existing facts are strong enough for a *prima facie* case to be established to found his present application. Firstly, he contended that the delay was due to the fact that his client was negotiating with the Government so that the latter would re-consider his position. As indicated above, there was an exchange of letters between him and the Government between 12th August, 1964, until 28th May, 1965. There appears to be no local authority in point, although a good deal of light is, I think, thrown on the problem by the decision of an Indian case. In *Gandhinagar Motor Transport Society* v. *Bombay State*,[1] the petitioners were granted a permit to run a public service vehicle in 1949. In 1951 they applied for a permit to run a second bus. In 1952 the regional transport officer granted them the permit. The respondents had also applied for a permit, but that was refused. One of them unsuccessfully appealed to the State Transport Authority. He then appealed to the Government in January 1953. The Government allowed the appeal and reversed the decision of the State Transport Authority and directed that a permit be granted to the respondent. The petitioners challenged that order. A preliminary point taken was that there was delay in the application. The order of the Government was made in January 1953. The petitioners' petition was made in May 1953. The explanation given was that the petitioners had made representation to Government to reconsider their decision and the Minister concerned rejected that representation in March 1953, and the petitioners received the final order of the Government in April 1953. In the course of the judgment the court said:—

"Now, we have had occasion to point out that the only delay which this court will excuse in presenting a petition is the delay which is caused by the petitioner pursuing a legal remedy which is given to him. In this particular case the petitioner did not pursue a legal

remedy. The remedy he pursued was extra-legal or extra-judicial. Once the final decision of Government is given, a representation is merely an appeal for mercy or indulgence, but it is not pursuing a remedy which the law gave to the petitioner. But even assuming that that time should be condoned, the petitioners did not make a representation to Government till 15.2.1953, a month after the order was passed, and even when they received the final decision of Government on 3.4.1953, they waited a month more before this petition was presented. Therefore, in our opinion, there has been such a delay in the presentation of this petition as would disentitle the petitioner to any relief at our hands".

That case is not binding on our courts but it is of great weight and I shall respectfully adopt it as my own. It follows therefore that counsel's contention cannot hold water. The only delay that the court will excuse is the delay involved in the pursuit of a legal remedy open to the petitioner, and no other. Secondly, it was contended that the applicant's relationship with the Government is not one of contract and therefore the letter dated 4th August, 1964, purporting to terminate his service by the payment of one month's salary in lieu of notice is an error in law on the face of the record. In my view, a Government, like any other employer, is not fettered to enter into special contracts of employment with temporary employees. I am encouraged in that view by a passage in the persuasive judgment of the Supreme Court of India in *Satish Chandra Anand* v. *The Union of India*:— [2]

"But of course the State can enter into contracts of temporary employment and impose special terms in each case, provided they are not inconsistent with the Constitution, and those who chose to accept those terms and enter into the contract are bound by them, even as the State is bound. When the employment is permanent there are certain statutory guarantees but in the absence of any such limitations Government is, subject to the qualification mentioned above, as free to make special contracts of service with temporary employees, engaged in works of a temporary nature, as any other employer"

In the light of the facts presented by the applicant, the offer made by the Public Services Commission was in respect of temporary employment and clause 2(d) specifically states that during the rest of the period of employment, that is to say after the first year of employment, the appropriate notice required by both parties would be three months' or one month's salary in lieu thereof plus cost of living allowance. The applicant accepted those terms and entered into a contract with the Government. He was thus bound by those terms in the same way as the Government was bound. In the circumstances I see no escape from the conclusion that the present case is sufficiently analogous to a contractual relationship. Thirdly, it was contended that by virtue of article 132(2A) of the Federal Constitution the applicant holds office during the pleasure of the Yang di-Pertuan Agong and therefore he cannot be dismissed unless he was given an reasonable opportunity of being heard: see article 135(2) of the Federal Constitution. Without deciding whether the applicant holds office during pleasure, I am clearly of the opinion that article 135(2) does not apply. The applicant was never dismissed from service. Dismissal pre-supposes some disciplinary proceeding against him whereby he is found guilty of indiscipline and misconduct under the Public Officers (Conduct and Discipline) Regulations, 1956. That is not the present position here. This is purely a case of a contract being terminated under one of its clauses. To say that the applicant was dismissed would be to use that word in quite a different sense from any in which, as far as I can see, it has hitherto been used.

In the existing state of facts I am satisfied that a strong case has not been established to warrant this court in enlarging the time in respect of this application. The application is therefore dismissed with costs.

Application dismissed.

Solicitors: *Mahendra & Hee.*

HO KIONG CHAN v. PATIPET

[F.C. (Tan Ah Tah Ag.C.J. (Singapore), Buttrose and Chua JJ.) November 15, 1965]

[Singapore — Federal Court Civil Appeal No. Y2 of 1965]

Damages — Personal injury — Evidence of negligence.

Negligence — Duty of driver of motor vehicle — High standard of care required — Duty to keep proper look out.

The plaintiff, respondent in this appeal, was a boy aged eight; he claimed damages for personal injuries sustained by him in consequence of being knocked down by a motor car driven by the defendant, appellant herein. The learned trial judge found the defendant's failure to keep a proper look out was the main cause of the accident and awarded damages at $2,000 and costs. On appeal the Federal Court was of the opinion that the learned trial judge in arriving at his decision, drew inferences and assumed facts not justified by the evidence, and

Held: (1) there was no negligence established on the part of the defendant and infant plaintiff was solely responsible for the accident;

(2) the appeal must be allowed with costs.

Per Choor Singh J. in the court below: "There is a very strong duty on the part of a driver to keep a good look out while driving. The power of control is illusory if the driver is not watching the road. The sharpness of the look out, required depends upon the circumstances existing at the time.... A driver should always anticipate the possible presence of others on the road and should always be able to stop within the range of his permitted vision.... It must be borne in mind that the duty of care incumbent upon the driver is very high because he is in charge of a vehicle capable of doing great damage, and he is usually able to observe pedestrians crossing his path and to warn them if they appear to be unaware of his approach."

Cases referred to:—

(1) *Page* v. *Richards & Draper*, unreported, cited at [1933] 2 K.B. 453, 457.